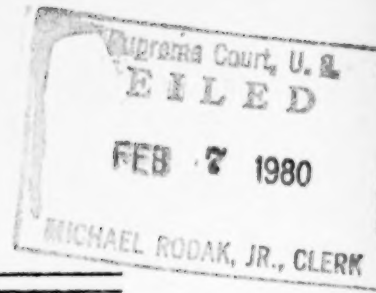


A P P E N D I X



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-383

F. W. STANDEFER,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

On Writ of Certiorari to the United States
Court of Appeals for the Third Circuit

Petition for Certiorari filed September 6, 1979
Petition for Certiorari granted January 7, 1980

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Docket Entries

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 77-139 CRIMINAL

UNITED STATES OF AMERICA

vs.

F. W. STANDEFER

Docket Entries

1977

June 15	A True Bill
June 15	Indictment filed
June 15	Request of U. S. Atty. for summons for appearance of Deft. by June 30, 1977 to file appearance and post \$500.00 OR bond.
June 15	Summons issued
June 21	Notice of Arraignment and Local Rule 24 Conf. of counsel to be held July 7, 1977 at 10:00 before Mag. Mitchell.

Docket Entries

June 22 Summons returned executed; served by certified mail on Deft. Standefer on 6/20/77 sent 6/15/77.

June 24 Memorandum filed re: correct address of defendant which is 1000 Grandview Ave., Apt. 203, Pgh., Pa. 15211

June 27 Praecipe for Appearance of Harold Gondelman, Esq. filed on Behalf of Deft. F. W. Standefer.

June 27 Deft. posts \$500.00 OR bond.

July 7 Motion for enlargement of time to file pretrial motions and proposed order filed by deft.

July 7 Deft. appears before Magistrate Mitchell and pleads NOT GUILTY

July 8 Order scheduling Pretrial conf. for Aug. 1, 1977 entered (Knox, J.)

July 8 Order of Court entered directing that the Deft. F. W. Standefer is granted leave to file pretrial motions to Aug. 1, 1977 (Marsh, J.)

July 18 Motion for continuance filed by deft.

July 18 Motion to dismiss filed by deft.

July 20 Order of court entered directing that an arg. on Defts. motion for continuance

Docket Entries

and motion to dismiss is fixed for Aug. 1, 1977 at 10:00 before Judge Knox (Knox, J.)

Aug. 1 Pretrial held and arg. on motion for continuance before Knox, J. Memo filed (Rep. C. Shuff)

Aug. 2 Order entered dtd 8/1/77 that briefs in connection with all pending motions except mot for add. preemptory challenges & motion for continuance which was argued 8/1/77 be filed as follows: movants by 8/15/77; respondents by 8/24/77; further ordered that arg. on same is scheduled for 8/26/77 at 9:15 A.M. together with further pre-trial conf.; further ordered that any additional memoranda or material with respect to the motion for continuance be filed by 8/15/77; failure to file timely briefs unless extension is secured will result in appropriate sanctions against the delinquent party (Knox, J.)

Aug. 8 Waiver of Speedy Trial Act filed by Deft.

Docket Entries

Aug. 24 Order of Court entered directing that motions for continuance are denied. Further ordered that this case is fixed for trial on Nov. 28, 1977 at 10:00 at which time counsel are directed to proceed with the empanelling of a jury (Knox, J.)

Aug. 29 Hearing on All Pending Motions held before Judge Knox. Memo filed. Reporter: C.R. Shuff Concluded C.A. V

Sept. 23 Order of court entered dated Sept. 20, 1977 directing that the motions of defts for dismissal of counts 1, 3 and 5 of the indictment is denied (Knox, J.)

Sept. 23 Order of court entered directing that the U.S. Atty. respond within 7 days to second motion for continuance (Knox, J.)

Sept. 23 Memorandum denying motion to dismiss indictment as constituting arbitrary, capricious and unconstitutional selective prosecution filed (Knox, J.)

Sept. 23 Order of court entered, dated Sept. 20, 1977, directing that the motion of Deft. Standefer to dismiss indictment is denied.

Docket Entries

Sept. 23 Memorandum denying defts' motions to dismiss: acquittal of Agent Neiderberger filed (Knox, J.)

Sept. 28 Memorandum re: continuance of case filed (Knox, J.)

Sept. 28 Order of court entered directing that the second motion for continuance filed by defts is denied (Knox, J.)

Sept. 28 Memorandum re: severance of offenses or to elect between the offenses filed (Knox, J.)

Sept. 28 Order of court entered, dated Sept. 27, 1977, directing that the motion to compel to elect or for severance is denied (Knox, J.)

Sept. 30 Memorandum Opinion Motion to Dismiss Multiplicitous Counts filed (Knox, J.)

Sept. 30 Order of court entered, dated Sept. 29, 1977, directing that the motion to dismiss counts 1, 3, 5, 7 and 9 for multiplicity is denied (Knox, J.)

Oct. 11 Order Denying Motion for Bill of Particulars filed (Knox, J.)

Oct. 12 Memorandum Denying Motion to Dismiss for failure to allege facts constituting criminal offense filed (Knox, J.)

Docket Entries

- Oct. 12 Order of court entered, dated Oct. 11, 1977 directing that the motion to dismiss for failure to allege facts constituting a criminal offense filed by defts is denied without prejudice to the right of the deft. to raise such contention at trial after the evidence with respect to this matter has been received (Knox, J.)
- Nov. 15 Motion ex parte for severance, or, in the alternative, for continuance filed by deft.
- Nov. 15 Order entered fixing argument on motion for severance or continuance for 11-21-77 at 9:15 A.M. (Knox, J.)
- Nov. 21 Argument on Deft. Standefer's Motion for severance or continuance held before Judge Knox. Memo filed. Reporter: M. Brown. (Motion for continuance denied without prejudice; Motion for severance granted)
- Nov. 23 Order of court entered, dated Nov. 21, 1977, directing that the motion for severance is granted and the charges against deft. Gulf Oil Corp. are severed from the charges against deft. F. W.

Docket Entries

- Standefer; further ordered that the motion for continuance is denied and the plea of Gulf Oil Corp. will continue as scheduled on Nov. 22, 1977 in open court (Knox, J.)
- Nov. 28 Conference held before Judge Knox. Memo filed. Reporter: M. Brown. (Motion for continuance presented by Deft. Standefer and ruling reserved)
- Nov. 28 Motion ex parte F. W. Standefer to conduct individual voir dire of jurors out of the presence of other jurors filed and order of court entered granting same (Knox, J.)
- Nov. 29 Proposed Questions ex Parte Deft., F.W. Standefer, for voir dire examination of Jurors filed.
- Nov. 29 Additional Questions ex parte F. W. Standefer for voir dire examination of jurors filed.
- Nov. 29 Jury Selection time: 11/28/77-4 hours and 30 minutes 11/29/77-4 hours Total: 8 hrs. 30
- Nov. 29 Jury Trial opens before Judge Knox

8a

Docket Entries

and a jury as to Deft. Standefer

Nov. 30 Jury Trial continues

Dec. 1 Conference hld before Judge Knox.
Memo filed. Reporter: Marilyn Brown
(Oral motion for mistrial filed by
deft. denied)

Dec. 1 Jury Trial Continues

Dec. 2 Jury Trial Continues

Dec. 5 Jury Trial Continues

Dec. 6 Jury Trial Continues

Dec. 7 Jury Trial Continues

Dec. 8 Jury Trial Continues

Dec. 9 Jury Trial Continues and Concludes.
Memo filed. (Reporter: Marilyn Brown)

Dec. 12 Jury returns verdict of GUILTY as to
counts 1 through 9 on Dec. 9, 1977.
Verdict sheet filed.

Dec. 12 Motion for Continuance filed and order
of court entered, dated Nov. 29, 1977
directing that the mtn. to continue
is DENIED (Knox, J.)

Dec. 12 Jury Question filed.

Dec. 12 Deft's Requests for Instructions to
the jury filed.

Dec. 12 United States Additional Points for
Charge filed.

Docket Entries

Dec. 12 Points for charge filed by Pltf.

Dec. 12 Motion in arrest of judgment, or, in
the alternative, for new trial filed
by Deft. Standefer with proposed
order of court.

Dec. 15 Supplemental Motion in Arrest, Or,
In the Alternative, For New Trial
filed by Deft. Standefer.

Dec. 20 Order of court entered directing that
the Deft's brief on motion in arrest
of judgment etc. be filed on or before
Jan. 20, 1978; respondent's brief to
be filed on or before Jan. 30, 1978;
further ordered that arg. is set for
Feb. 1, 1978 at 4:00 P.M. on the
motion (Knox, J.)

1978

Jan. 10 Order of court, dated Jan. 9, 1978
for payment of juror expenses entered
(Knox, J.)

Jan. 16 Excerpt from Proceedings held Nov. 28,
1977 before Judge Knox filed. (Reporter:
Marilyn G. Brown)

Jan. 31 Motion filed and order of court entered,
dated Jan. 30, 1978, directing that the
government is granted an additional one

Docket Entries

day from Jan. 30, 1978 to Feb. 1, 1978 in which to file Brief in Opposition to Deft. F. W. Standefer's Motion in Arrest of Judgment, or in the Alternative, for a new trial (Knox, J.)

- Feb. 2 Hearing on motion for new trial held before Knox, J. Memo filed (Rep. M. Brown)
- Mar. 15 Excerpt from proceedings held Dec. 5, 1977 before Judge Knox filed. (Reporter: Marilyn G. Brown)
- May 24 Opinion of Knox, J. re motions in arrest of judgment or in the alternative for a new trial filed.
- May 24 Order entered directing that deft's motions in arrest of judgment or in the alternative for a new trial are denied; presentence report to be prepared & deft. appear for sentence on 6-27-78 at 9:15 A.M. (Knox, J.)
- May 25 Notice of Sentence to be held June 27, 1978 at 9:15 A.M. Before Judge Knox filed.
- June 14 Notice rescheduling sentence to June 13, 1978 at 9:15 A.M. before Judge Knox filed.

Docket Entries

- June 19 SENTENCE: Imprisonment of 2 yrs on condition that he be imprisoned for a period of 6 months and the remainder of imprisonment suspended and deft. placed on probation for 2 yrs. after his release from incarceration. The conditions of probation are 1) he obey all local, state and federal laws 2) he comply with the rules and regulations of the probation office 3) he pay a fine of \$2,000 in installments as agreed upon with the probation office. This as to Count 1. The same sentence is imposed on cts. 2, 3, 4, 5, 6, 7, 8 and 9. The terms of imprisonment to run concurrently, but a separate fine of \$2,000.00 is imposed on each count, making a total fine of \$18,000.00; present bond continued pending appeal (Knox, J.) CC issued (Reporter: M. Brown)
- June 19 Notice of Appeal filed by Deft.
- June 19 Copy of Notice of Appeal and cover letter mailed to U. S. Court of Appeals along with a copy of the Docket Entries; copy of appeal and cover letter to U.S.

Docket Entries

Atty.; copy of cover letter to Deft's
counsel; copy of Appeal to Judge Knox

June 26 Original record and exhibits mailed
to U. S. Court of Appeals

Indictment

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
v.)	No. 77- CRIMINAL
GULF OIL CORPORATION)	(18 U.S.C. §2
F. W. STANDEFER)	18 U.S.C. §§201(f) and 2
JOSEPH FITZGERALD)	26 U.S.C. §7214(a)(2))

The grand jury charges:

From on or about May 17, 1971, and continuing until on or about July 17, 1971, at Pittsburgh, in the Western District of Pennsylvania, and elsewhere, the Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH FITZGERALD, did aid and abet Cyril J. Niederberger, an officer and employee of the United States acting in connection with revenue laws of the United States, namely, a supervisory Internal Revenue agent, who was Case Manager for the audit of GULF OIL CORPORATION income tax returns for the years 1959, 1960, 1961, 1962, 1963, and 1964, in unlawfully and knowingly, receiving a fee, compensation, and reward, as set forth below, which was not prescribed by law for the performance of his duties as an Internal Revenue agent; that is to say, on or about May 17, 1971, Defendants, GULF

Indictment

OIL CORPORATION, F. W. STANDEFER and JOSEPH F. FITZGERALD, caused a reservation to be made, and furthermore, caused to be mailed a \$50.00 deposit, for Cyril J. Niederberger, and other members of his family for a vacation at the Beachcomber Lodge and Villas, Pompano Beach, Florida, from July 11, 1971 until July 17, 1971, and Cyril J. Niederberger together with members of his family did travel in interstate commerce from Pittsburgh, Pennsylvania, to Pompano Beach, Florida, and did stay at said hotel from July 11, 1971 to July 17, 1971, on which date the Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH F. FITZGERALD, paid the balance due on the motel bill in the sum of \$306.80.

In violation of Section 7214 of the Internal Revenue Code; 26 United States Code 7214(a)(2) and Section 2 of Title 18, United States Code.

SECOND COUNT

The grand jury further charges:

On or about January 18, 1973, at Pittsburgh, in the Western District of Pennsylvania, the Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and

Indictment

JOSEPH F. FITZGERALD, did unlawfully and knowingly, directly and indirectly, promise, offer and give things of value, to wit, a vacation for Cyril J. Niederberger at Miami, Florida, which included, among other things, the following: an airfare ticket, lodging at the Doral Country Club, meals, drinks, rental car fees, and golf outing fees, totaling the approximate amount of \$445.16, to Cyril J. Niederberger, who at the time was a supervisory United States Internal Revenue agent, in particular, Case Manager of the Internal Revenue Service for the audit of GULF OIL CORPORATION's income tax returns, the above things of value being promised, offered and given otherwise than as provided by law for the proper discharge of Cyril J. Niederberger's official duties, for and because of official acts performed and to be performed by him, namely, the audit of the 1965, 1966, 1967, 1968, 1969 and 1970 income tax returns of the GULF OIL CORPORATION.

In violation of Sections 201(f) and 2 of Title 18, United States Code.

THIRD COUNT

The grand jury further charges:

On or about January 18, 1973, at Pittsburgh, in the Western District of Pennsylvania, the

Indictment

Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH F. FITZGERALD, did aid and abet Cyril J. Niederberger, an officer and employee of the United States acting in connection with revenue laws of the United States, namely, a supervisory Internal Revenue agent, who was at the time Case Manager for the audit of the GULF OIL CORPORATION income tax returns for the years 1965, 1966, 1967, 1968, 1969, and 1970, in unlawfully and knowingly, receiving a fee, compensation, and reward, to wit, a vacation for Cyril J. Niederberger at Miami, Florida, which included, among other things, the following: an airfare ticket, lodging at the Doral Country Club, meals, drinks, rental car fees, and golf outing fees, totaling the approximate amount of \$445.16, which were not prescribed by law for the performance of his duties as an Internal Revenue Agent.

In violation of Section 7214(a)(2) of Title 26, United States Code and Section 2 of Title 18, United States Code.

FOURTH COUNT

The grand jury further charges:

On or about August 30, 1973, at Pittsburgh, in the Western District of Pennsylvania, the

Indictment

Defendants, GULF OIL CORPORATION and F. W. STANDEFER, did unlawfully and knowingly, directly and indirectly, promise, offer and give things of value, to wit, a vacation for Cyril J. Niederberger and his wife at Absecon, New Jersey, which included, among other things, the following: airfare tickets, lodging at the Seaview Country Club, meals, drinks, and golf outing fees, totaling the approximate amount of \$664.71, to Cyril J. Niederberger, who at the time was a supervisory United States Internal Revenue agent, in particular, Case Manager of the Internal Revenue Service for the audit of GULF OIL CORPORATION's income tax returns, the above things of value being promised, offered and given otherwise than as provided by law for the proper discharge of Cyril J. Niederberger's official duties, for and because of official acts performed and to be performed by him, namely, the audit of the 1965, 1966, 1967, 1968, 1969, and 1970 income tax returns of the GULF OIL CORPORATION.

In violation of Sections 201(f) and 2 of Title 18, United States Code.

FIFTH COUNT

The grand jury further charges:

On or about August 30, 1973, at Pittsburgh, in the Western District of Pennsylvania, the

Indictment

Defendants, GULF OIL CORPORATION and F. W. STANDEFER, did aid and abet Cyril J. Niederberger, an officer and employee of the United States acting in connection with revenue laws of the United States, namely, a supervisory Internal Revenue agent, who was at the time Case Manager for the audit of the GULF OIL CORPORATION income tax returns for the years 1965, 1966, 1967, 1968, 1969, and 1970, in unlawfully and knowingly, receiving a fee, compensation, and reward, to wit, a vacation for Cyril J. Niederberger and his wife at Absecon, New Jersey, which included, among other things, the following: airfare tickets, lodging at the Seaview Country Club, meals, drinks, and golf outing fees, totaling the approximate amount of \$664.71, which were not prescribed by law for the performance of his duties as an Internal Revenue agent.

In violation of Section 7214(a)(2) of Title 26, United States Code and Section 2 of Title 18, United States Code.

SIXTH COUNT

The grand jury further charges:

On or about March 28, 1974, at Pittsburgh, in the Western District of Pennsylvania, the

Indictment

Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH F. FITZGERALD, did unlawfully and knowingly, directly and indirectly, promise, offer and give things of value, to wit, a vacation for Cyril J. Niederberger at Pebble Beach, California, which included, among other things, the following: an airfare ticket, lodging at the Del Monte Lodge, meals, drinks, rental car fees, and golf outing fees, totaling the approximate amount of \$690.93, to Cyril J. Niederberger, who at the time was a supervisory United States Internal Revenue agent, in particular, Case Manager of the Internal Revenue Service for the audit of GULF OIL CORPORATION's income tax returns, the above things of value being promised, offered and given otherwise than as provided by law for the proper discharge of Cyril J. Niederberger's official duties, for and because of official acts performed and to be performed by him, namely, the audit of the 1967, 1968, 1969, and 1970 income tax returns of the GULF OIL CORPORATION, Cyril J. Niederberger's investigation conducted in behalf of the Internal Revenue Service of GULF OIL CORPORATION's political contributions, and the submission of an investigative memorandum on March 28, 1974.

In violation of Sections 201(f) and 2 of Title 18, United States Code.

IndictmentSEVENTH COUNT

The grand jury further charges:

On or about March 28, 1974, at Pittsburgh, in the Western District of Pennsylvania, the Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH W. FITZGERALD, did aid and abet Cyril J. Niederberger, an officer and employee of the United States acting in connection with revenue laws of the United States, namely, a supervisory Internal Revenue agent, who was at the time Case Manager for the audit of the GULF OIL CORPORATION income tax returns for the years 1967, 1968, 1969, and 1970, and who also conducted an investigation in 1974 in behalf of the Internal Revenue Service of GULF OIL CORPORATION's political contributions and, who, on March 28, 1974, submitted an investigative memorandum, in unlawfully and knowingly, receiving a fee, compensation, and reward, to wit, a vacation for Cyril J. Niederberger at Pebble Beach, California, which included, among other things, the following: an airfare ticket, lodging at the Del Monte Lodge, meals, drinks, rental car fees, and golf outing fees, totaling the approximate amount of \$690.93, which were not prescribed by law for the performance of his duties as an Internal

Indictment

Revenue Agent.

In violation of Section 7214(a)(2) of Title 26, United States Code and Section 2 of Title 18, United States Code.

EIGHTH COUNT

The grand jury further charges:

On or about June 16, 1974, at Pittsburgh, in the Western District of Pennsylvania, the Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH F. FITZGERALD, did unlawfully and knowingly, directly and indirectly, promise, offer and give things of value, to wit, a vacation for Cyril J. Niederberger and his wife at Las Vegas, Nevada, which included, among other things, the following: airfare tickets, lodging at the Desert Inn Hotel, meals, drinks, and golf outing fees, totaling the approximate amount of \$1,187.32, to Cyril J. Niederberger, who at the time was a supervisory United States Internal Revenue agent, in particular, Case Manager of the Internal Revenue Service for the audit of GULF OIL CORPORATION's income tax returns, the above things of value being promised, offered and given otherwise than as provided by law for the proper discharge of Cyril J. Niederberger's official duties, for and because of official acts performed and to be performed by

Indictment

him, namely, the audit of the 1969 and 1970 income tax returns of the GULF OIL CORPORATION, Cyril J. Niederberger's investigation conducted in behalf of the Internal Revenue Service of GULF OIL CORPORATION's political contributions and the submission of an investigative memorandum on March 28, 1974.

In violation of Sections 201(f) and 2 of Title 18, United States Code.

NINTH COUNT

The grand jury further charges:

On or about June 16, 1974, at Pittsburgh, in the Western District of Pennsylvania, the Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH F. FITZGERALD, did aid and abet Cyril J. Niederberger, an officer and employee of the United States acting in connection with revenue laws of the United States, namely, a supervisory Internal Revenue agent, who was at the time Case Manager for the audit of the GULF OIL CORPORATION income tax returns for the years 1969 and 1970, and who also conducted an investigation in 1974 in behalf of the Internal Revenue Service of GULF OIL CORPORATION's political contributions and who, on March 28, 1974, submitted an investigative memorandum, in unlawfully and knowingly

Indictment

receiving a fee, compensation, and reward, to wit, a vacation for Cyril J. Niederberger and his wife at Las Vegas, Nevada, which included, among other things, the following: airfare tickets, lodging at the Desert Inn Hotel, meals, drinks, and golf outing fees, totaling the approximate amount of \$1,187.32, which were not prescribed by law for the performance of his duties as an Internal Revenue agent.

In violation of Section 7214(a)(2) of Title 26, United States Code and Section 2 of Title 18, United States Code.

A True Bill,

FOREMAN

BLAIR A. GRIFFITH
United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
vs. : No. 77-139 Criminal
F. W. STANDEFER, et al. :

MOTION TO DISMISS

AND NOW comes the defendant, F. W. Standefer, by his attorney, Harold Gondelman, and moves your Honorable Court to dismiss the indictment for the following reasons:

I.

Counts One, Three and Five of the Indictment
Should Be Dismissed Since the Alleged Principal
Has Already Been Acquitted of the
Same Charges

1. On June 15, 1977, the indictment against this defendant and others was returned.

2. The indictment alleges certain facts and attempts to establish that this defendant did aid

Motion to Dismiss

and abet one Cyril J. Neiderberger in violating 26 U.S.C., §7214(a)(2).

3. Count One of said indictment, a copy of which is attached hereto for the convenience of the Court as Exhibit "A", alleges a \$50.00 deposit for Cyril J. Neiderberger for vacation at the Beachcomber Lodge and Villas, Pompano Beach, Florida from July 11, 1971 until July 17, 1971, and the payment of the balance due on the motel bill in the sum of \$306.80.

4. In a criminal action filed to No. 76-143, Cyril J. Neiderberger was found "not guilty" of the second count of an indictment against him, a true and correct copy of which, for the convenience of the Court, is attached hereto as Exhibit "A-1". Said count against Cyril J. Neiderberger alleges the same dates, times and amounts as having been received by him as principal.

5. Count Three of the within indictment, a copy of which is attached hereto for the convenience of the Court as Exhibit "B", alleges that on or about January 18, 1973, an air fare ticket, lodging at the Doral Country Club, meals, drinks, rental car fees and golf outing fees totaling \$445.16 were paid to Cyril J. Neiderberger.

Motion to Dismiss

6. Count Four of the indictment at No. 76-143 Criminal, a copy of which is attached hereto for the convenience of the Court as Exhibit "B-1", alleges the same dates, times and amounts as having been received by Cyril J. Neiderberger as principal.

7. Count Five of the within indictment, a copy of which is attached hereto for the convenience of the Court as Exhibit "C", alleges payment on or about August 30, 1973 for a vacation for Cyril J. Neiderberger and his wife at Absecon, New Jersey, including air fare tickets, lodging at the Seaview Country Club, meals, drinks and golf outing fees, totaling \$664.71.

8. Count Six of the indictment at No. 76-143 Criminal, a copy of which is attached hereto for the convenience of the Court as Exhibit "C-1", alleges the same dates, times and amounts as having been received by Cyril J. Neiderberger as principal.

9. Since Cyril J. Neiderberger has been acquitted of receiving said funds and Cyril J. Neiderberger is the only named principal, this

Motion to Dismiss

defendant cannot, as a matter of law, be found guilty as an aider and abettor since a jury has already found no violation of 26 U.S.C., §7214 (a)(2) by the principal.

WHEREFORE, F. W. Standefer, defendant, prays this Honorable Court to dismiss Counts One, Three and Five of the within indictment for the reasons hereinabove set forth.

* * * *

(Remaining part of motion not here relevant)

Motion to Dismiss

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
v.)	No. 77-139 CRIMINAL
GULF OIL CORPORATION)	(18 U.S.C. §2
F. W. STANDEFER)	18 U.S.C. §§201(f) and 2
JOSEPH FITZGERALD)	26 U.S.C. §7214(a)(2)

The grand jury charges:

From on or about May 17, 1971, and continuing until on or about July 17, 1971, at Pittsburgh, in the Western District of Pennsylvania, and elsewhere, the Defendants, GULF OIL CORPORATION, F.W. STANDEFER, and JOSEPH FITZGERALD, did aid and abet Cyril J. Niederberger, an officer and employee of the United States acting in connection with revenue laws of the United States, namely, a supervisory Internal Revenue agent, who was Case Manager for the audit of GULF OIL CORPORATION income tax returns for the years 1959, 1960, 1961, 1962, 1963, and 1964, in unlawfully and knowingly, receiving a fee, compensation, and reward, as set forth below, which was not prescribed by law for the performance of his duties as an Internal Revenue agent; that is to say, on or about May 17, 1971,

Exhibit "A"

Motion to Dismiss

Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH F. FITZGERALD, caused a reservation to be made, and furthermore, caused to be mailed a \$50.00 deposit, for Cyril J. Niederberger, and other members of his family for a vacation at the Beachcomber Lodge and Villas, Pompano Beach, Florida, from July 11, 1971 until July 17, 1971, and Cyril J. Niederberger, together with members of his family did travel in interstate commerce from Pittsburgh, Pennsylvania, to Pompano Beach, Florida, and did stay at said hotel from July 11, 1971 to July 17, 1971, on which date the Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH F. FITZGERALD, paid the balance due on the motel bill in the sum of \$306.80.

In violation of Section 7214 of the Internal Revenue Code; 26 United States Code 7214(a)(2) and Section 2 of Title 18, United States Code.

SECOND COUNT

The grand jury further charges:

From on or about May 17, 1971, and continuing until on or about July 17, 1971, at Pittsburgh, in the Western District of Pennsylvania, and elsewhere, the defendant, CYRIL J.

NIEDERBERGER, an officer and employee of the United States acting in connection with revenue laws of the United States, namely, a Supervisory Internal Revenue agent, who was Case Manager for the audit of the Gulf Oil Corporation income tax returns for the years 1962, 1963, and 1964, did unlawfully and knowingly, receive a fee, compensation, and reward, as set forth below, which was not prescribed by law for the performance of his duties as an Internal Revenue Agent; that is to say, on or about May 17, 1971, the Gulf Oil Corporation made a reservation, and mailed a \$50.00 deposit, for the defendant, CYRIL J.

NIEDERBERGER, and other members of his family for a vacation at the Beachcomber Lodge and Villas, Pompano Beach, Florida, from July 11, 1971 until July 17, 1971, and defendant CYRIL J. NIEDERBERGER together with members of his

Exhibit "A-1"

family did travel in interstate commerce from Pittsburgh, Pennsylvania, to Pompano Beach, Florida, and did stay at said hotel from July 11, 1971, to July 17, 1971, on which date the Gulf Oil Corporation paid the balance due on the motel bill in the sum of \$306.80.

In violation of Section 7214 of the Internal Revenue Code; 26 United States Code 7214(a)(2).

Motion to DismissTHIRD COUNT

The grand jury further charges:

On or about January 18, 1973, at Pittsburgh, in the Western District of Pennsylvania, the Defendants, GULF OIL CORPORATION, F. W. STANDEFER, and JOSEPH F. FITZGERALD, did aid and abet Cyril J. Niederberger, an officer and employee of the United States acting in connection with revenue laws of the United States, namely, a supervisory Internal Revenue Agent, who was at the time Case Manager for the audit of the GULF OIL CORPORATION income tax returns for the years 1965, 1966, 1967, 1968, 1969, and 1970, in unlawfully and knowingly, receiving a fee, compensation, and reward, to wit, a vacation for Cyril J. Niederberger at Miami, Florida, which included, among other things, the following: an airfare ticket, lodging at the Doral Country Club, meals, drinks, rental car fees, and golf outing fees, totaling the approximate amount of \$445.16, which were not prescribed by law for the performance of his duties as an Internal Revenue Agent.

In violation of Section 7214(a)(2) of Title 26, United States Code and Section 2 of Title 18, United States Code.

EXHIBIT "B"

Motion to DismissFOURTH COUNT

The grand jury further charges:

On or about January 18, 1973, at Pittsburgh, in the Western District of Pennsylvania, the Defendant, CYRIL J. NIEDERBERGER, an officer and employee of the United States acting in connection with revenue laws of the United States, namely a supervisory Internal Revenue agent, who was Case Manager for the audit of the Gulf Oil Corporation income tax returns for the years 1965, 1966, 1967, and 1968, did unlawfully and knowingly, receive a fee, compensation, and reward, which was not prescribed by law for the performance of his duties as an Internal Revenue agent, such fee, compensation and reward being the following: a vacation for Cyril J. Niederberger at Miami, Florida, which included, among other things: a round-trip airfare ticket, lodging at the Doral Country Club, meals, drinks, rental car fees, and golf outing fees, totaling the approximate amount of \$445.16.

In violation of Section 7214 of the Internal Revenue Code; 26 United States Code 7214(a)(2).

Exhibit "B-1"

Motion to DismissFIFTH COUNT

The grand jury further charges:

On or about August 30, 1973, at Pittsburgh, in the Western District of Pennsylvania, the Defendants, GULF OIL CORPORATION and F. W. STANDEFER, did aid and abet Cyril J. Niederberger, an officer and employee of the United States acting in connection with revenue laws of the United States, namely, a supervisory Internal Revenue agent, who was at the time Case Manager for the audit of the GULF OIL CORPORATION income tax returns for the years 1965, 1966, 1967, 1968, 1969, and 1970, in unlawfully and knowingly receiving a fee, compensation, and reward, to wit, a vacation for Cyril J. Niederberger and his wife at Absecon, New Jersey, which included, among other things, the following: airfare tickets, lodging at the Seaview Country Club, meals, drinks, and golf outing fees, totaling the approximate amount of \$664.71, which were not prescribed by law for the performance of his duties as an Internal Revenue Agent.

In violation of Section 7214(a)(2) of Title 26, United States Code and Section 2 of Title 18, United States Code.

Exhibit "C"

Motion to DismissSIXTH COUNT

The grand jury further charges:

On or about August 30, 1973, at Pittsburgh, in the Eastern District of Pennsylvania, the Defendant, CYRIL J. NIEDERBERGER, an officer and employee of the United States acting in connection with revenue laws of the United States, namely a supervisory Internal Revenue agent, who was Case Manager for the audit of the Gulf Oil Corporation income tax returns for the years 1969 and 1970, did unlawfully and knowingly, receive a fee, compensation, and reward, which was not prescribed by law for the performance of his duties as an Internal Revenue agent, such fee, compensation and reward being the following: a vacation for Cyril J. Niederberger and his wife at Absecon, New Jersey, which included, among other things: round-trip airfare tickets, lodging at the Seaview Country Club, meals, drinks, and golf outing fees, totaling the approximate amount of \$664.71.

In violation of Section 7214 of the Internal Revenue Code; 26 United States Code 7214(a)(2).

Exhibit "C-1"

Points for Charge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 vs. : Criminal No. 77-139
 :
 F. W. STANDEEFER :

POINTS FOR CHARGE

[Government Points for Charge Nos. 1 to 8
and 10-15 omitted from printing]

9. The United States is not required to prove that defendant Fred W. Standefer asked that some specific thing wrong be done in return for the giving of the vacations, things of value, compensation or rewards set forth in the indictment. United States v. Alessio, supra. United States v. Barash, 412 F.2d 26 (2nd Cir. 1968), cert. denied 396 U.S. 832 (1969). United States v. Irwin, supra. United States v. Cohen, supra.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
vs. : Criminal No. 77-139
F. W. STANDEFER :

TRANSCRIPT OF PROCEEDINGS

Jury Trial in the above-entitled action, beginning on November 28, 1977, United States District Court, Pittsburgh, Pennsylvania, before Honorable William W. Knox, District Judge.

APPEARANCES:

On behalf of the Government:
Craig McKay, Assistant United
States Attorney

On behalf of the Defendant:
Harold Gondelman, Esquire

John Judson Ross - Direct

(p. 650, Volume 3)

Q. You knew about that one?

A. At the time, and I heard about the others later.

Q. So that June 16, 1974, I think is the Las Vegas trip. That one you knew about then?

A. That's correct.

Q. The others you heard about later?

A. Yes, sir.

Q. Now after the report of March 28, 1974, did the IRS conduct other investigations of Gulf Oil?

A. Yes.

Q. Were there other disclosures by Gulf in connection with political contributions and other matters?

A. Yes, sir.

Q. Was anything done by the IRS in April of 1975?

A. That's when they removed the regular agents from the audit in the later years and brought in a special group from the Intelligence Division.

Q. And how long did that special group from the Intelligence Division investigate Gulf and the trips and the IRS?

A. About 2 years.

Q. At the conclusion of the two year investigation by the Intelligence Division, do you have personal knowledge of what action was taken by the Department of Justice in regard to any criminal action from that investigation?

(p. 651)

MR. McKAY: Your Honor, may we approach the side bar?

THE COURT: Yes.

(At side bar, out of the hearing of the jury.)

MR. McKAY: Are we going to try the tax case here and the slush fund?

THE COURT: How is this relevant?

MR. GONDELMAN: Well, we have been trying the slush fund, Your Honor.

MR. McKAY: No, we are not.

MR. GONDELMAN: It is relevant because --

THE COURT: I'm talking about this decision not to make a criminal prosecution. How is that relevant?

MR. GONDELMAN: Because, you see, the so-called Bahamas Ex report of Niederberger is being attacked as having been purchased by a trip to Pebble Beach, California.

The fact is that after the IRS, with its Intelligence, with its impeccable Intelligence Division going at it hammer and tongs after Gulf, the United States Department of Justice has found that what Niederberger says in his report is true and accurate. There is no basis --

THE COURT: No, that doesn't follow at all. All it means is that they decided it wasn't worth while to bring a criminal prosecution.

MR. McKAY: That's correct.

(p. 652)

MR. GONDELMAN: But that's what Niederberger says in his report.

MR. McKAY: No, he doesn't.

THE COURT: Suppose they had decided to prosecute. Would you have let that in as admissible?

MR. McKAY: Excuse me. I will bring the attorneys from Washington here if we are going to get into that. They will tell the reasons why they didn't prosecute.

THE COURT: I don't think the fact that the U. S. Attorney or the Department of Justice decided not to prosecute somebody is admissible in a case such as this.

MR. GONDELMAN: Now my reason for making this offer, so that we understand it, because it is so prejudicial to this defendant in my opinion as to constitute reversible error, and I ask for a mistrial.

The fact is the Government has painted the entire picture here like the Niederberger report is something made out of whole cloth as a pack of lies, had nothing to do with a proper investigation, and had a proper investigation been performed, something would have happened, namely, the Intelligence Division who that report went to would have come in, made this big investigation and somebody would have gone to jail for it.

The fact of the matter is that after two years of intensive investigation by the Department of Justice and by the IRS and its Intelligence division, the sum and substance of

* * * *

design.

THE COURT: Because the Government doesn't prosecute somebody, I don't think -- If anything, it might be showing bad judgment or good judgment on the part of the Government.

MR. GONDELMAN: At this point I then move for a mistrial, because the fact that this Niederberger report has been allowed in evidence under the circumstances, as Your Honor has permitted it, without permitting me to show the circumstances of the fact that it is a valid report to this date,--

THE COURT: You are privileged to show that, but all I am prohibiting you from disclosing is something that has already been revealed to the jury twice because of the questions and so on, that go to the criminal prosecution.

MR. GONDELMAN: What you are saying, Your Honor, is that the Government of the United States, because it is so big, is not bound by the same rules as any other corporation; and that is that if its lawyers in Washington take one action and somebody in Pittsburgh wants to do something else, no court is going to hold the Government to not talking out of both sides of its mouth.

THE COURT: All I am saying is it is not relevant. Objection sustained. Motion denied.

(In open court.)

MR. GONDELMAN: I would like to mark that as an

* * * *

In Chambers Proceedings

(p. 1146, Volume 6)

Tom had them.

(Mr. Seligson left chambers.)

MR. GONDELMAN: While we are getting this, Your Honor, may I state that I will also ask, although perhaps not incorporate it in my request for instructions, that Your Honor instruct this jury that the failure of the Government to prove that anything was done improperly by Mr. Niederberger is a factor to be considered.

All these cases which you say you don't have to prove, it doesn't exclude the probative value and the circumstantial evidence, if you will, that nothing improperly having been done would indicate then that what was done was not a reward, fee, or something of value because they got nothing in return.

MR. McKAY: Your Honor, I object to that. The Government need not offer any proof whatsoever that Mr. Niederberger did anything improper, fixed the audits or whatever.

MR. GONDELMAN: That's right.

MR. McKAY: That is the case law.

MR. GONDELMAN: But --

MR. McKAY: Mr. Gondelman is attempting to have the Court charge the jury that proof that he did nothing improper has probative value.

As a matter of fact, it has no probative value as regards these particular statutes, Your Honor.

(p. 1147)

MR. GONDELMAN: It has. It has value to the finder of fact, because it certainly ought to be obvious that a finder of fact can sit there and say if at this stage in time the Government can't prove that Niederberger did a thing wrong, then these trips must have been for friendship, not for compensation, or were not things of value for the performance of his duties.

At least it is a factual factor to be considered.

THE COURT: I don't think I will charge that.

MR. GONDELMAN: Well, --

THE COURT: Let's go over the Defendant's requests. Nos. 1, 2, 3 and 4 are requests for directed verdicts. They will be refused.

No. 5 -- Do you have these, Mr. McKay?

MR. McKAY: Yes. I am picking up my copy right now, Your Honor.

THE COURT: What about 5?

MR. McKAY: I do not regard that as a proper rule of law or proper charge to a jury.

THE COURT: Why?

MR. McKAY: I believe that is a factual conclusion. It is part of the factual evidence and not part of the proper legal evidence.

THE COURT: I think that this point should be affirmed with a modification, the words "and the mere fact that he may

* * * *

Charge of the Court

(p. 2)

(The following proceedings were held in open court before the jury beginning at 11:35 a.m on December 9, 1977. Defendant was present with counsel.)

CHARGE OF THE COURT

THE COURT: Members of the jury, now that you have heard the evidence and the arguments of counsel, it becomes my duty to give you the instructions as to the law which applies to a case of this kind; and I will say to you, it is your duty as jurors to follow the law as stated in the instructions of the Court and to apply that law to the facts as you find them from the evidence in the case.

Now you are not to single out any one single instruction as stating all the law, but you should consider these instructions as a whole. Nor are you to be concerned with the wisdom of any rule of law as stated by the Court. Regardless of any opinion you might have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law

Charge of the Court

than that given in the instructions of the Court, just as it would also be a violation of your sworn duty as judges of the facts to base your verdict upon anything other than the evidence in the case.

Now you have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of

(pages 3 through 14 omitted from printing)

(p. 15)

official" to include any officer or employee or person acting for or on behalf of the United States or any department, agency or branch thereof in any official function under or by authority of any such department, agency or branch of government; and an official act is defined as meaning any decision or action on any question, matter, cause, suit, proceeding or controversy which may at any time be pending or which may by law be brought before any public official in his official capacity or in his place of trust or profit.

Now in particular, under this statute, these definitions would include as a public official an audit agent of the Internal Revenue Service.

Charge of the Court

The burden, of course, of proving such position is on the government.

In addition to that, however, the statute requires that the receipt be in connection with a proceeding in controversy or question, a matter, cause or suit, proceeding or controversy which may at any time be pending or be brought by him in his official capacity.

Now you will see, therefore, that the essential elements of this offense which must be proved by the government beyond a reasonable doubt are first that the recipient is an employee or official of a department or branch of the government; second, that he was acting in connection with his employment with the department or branch of government; third, that

(p. 16)

the defendant did give, offer or promise anything of value to him for or because of an official act performed or to be performed by him; fourth, that the defendant commits the act of giving, offering or promising knowingly and purposefully, and not through misunderstanding, inadvertence, mistake or some other innocent reason; and fifth, that such gift was with the purpose of giving a thing of

Charge of the Court

value for or by reason of the official act performed or to be performed by him, that is, in this case examination of the tax returns of Gulf Oil Corporation.

Now this is not, the Courts have said, a bribery statute, where you have to go on and you have to show corrupt motives and willfully intending to violate the law where money is given to a public official for the performance of a specific act or duty.

It is important for you to understand that in order to find this defendant guilty of giving, offering or promising anything of value to Agent Niederberger for or because of any official act performed or to be performed by him, that it is not necessary that you find the defendant gave such things of value with the intent of influencing an Internal Revenue Agent in performing his audit or audits of Gulf Oil Corporation's returns. It is sufficient if the defendant made these payments because of desire to create a better atmosphere with Niederberger with respect to the performance of the audit or

Charge of the Court

(p. 17)

appreciation for a speedy or favorable audit, and that Niederberger, knowing this, received a thing of value.

Whether the tax returns as filed were proper or improper is irrelevant to the issue in this case. The evidence, however, must show to your satisfaction beyond a reasonable doubt that the defendant gave something of value to a public official for or because of any official act performed or to be performed by such official.

If you conclude beyond a reasonable doubt that the vacations or trips or anything else of value were given to Niederberger, knowing that he was in a position to use his authority in a manner which would affect the conditions of the audit, then you could find that the things of value were given to him because of Niederberger's exercise of his authority, that is, for or because of any official act performed or to be performed.

In addition, you must find that the things of value were furnished to Niederberger otherwise

Charge of the Court

than as provided by law for the proper discharge of his official duty.

I will also say to you it is not necessary to show any agreement by or with Niederberger as to any particular act or acts or duties to be performed or done, but only that something of value was given to him for or because of an official act performed or to be performed by him in the course of his duty.

(p. 18)

Again, it is not necessary for the government to show that the gift caused or prompted or in any way affected the happening of the official act or its extent or manner or the means by which it was performed.

The words "making of the gift for or because of any official act" limit the prohibition against the act of making a gift to a public official to those who are accompanied by and made with this particular state of mind, design or purpose, which is the essence of intent.

Whether this regarded a specific intent or a limitation on the acts that are within the view of the section is of no consequence. The state of mind by which the act is done is, however, an

Charge of the Court

essential element of the offense which the government must prove.

Thus the government must prove to you beyond a reasonable doubt as to these 201(f) charges that the defendant willfully and knowingly, as distinguished from inadvertently or negligently, gave something of value to the agent because of official acts performed or to be performed by the agent, namely, the audit of the tax returns in question.

I must say to you, however, that if on the other hand these acts in making these gifts to Niederberger had nothing to do with giving of things of value to a public official for performance of acts to be performed by him, but on the contrary, as contended by the defendant, these things were given as a

(p. 19)

matter of friendship or for social purpose only, then you should acquit the defendant.

Now we move on to the other statute which was mentioned here, this 7214(a), and you have that before you, and, of course, you see that this starts, "Unlawful Acts of Revenue Officers or Agents. Any officer or employee of the United States acting in connection with any revenue law

Charge of the Court

of the United States, . . . (2) who knowingly demands other or greater sums than are authorized by law or receives any fee, compensation or reward except as by law prescribed for the performance of any duty shall be guilty of an offense against the United States."

Now under this section of the Internal Revenue Code, it is unlawful for any officer or employee of the United States acting in connection with any revenue law of the United States to receive any fee, compensation or reward except as prescribed by law for the performance of any of his duties.

As applied to this case, there are the following essential elements which must be proved by the government beyond a reasonable doubt to establish the offense charged: first, that the Internal Revenue Agent in this case, Niederberger, was an employee of the United States; secondly, that he was acting in connection with the revenue laws of the United States; third, that he received a fee, compensation or reward except as prescribed by law; fourth, that such fee, compensation or

(p. 20)

reward was for the performance by this employee of

Charge of the Court

any duty; -- I will say to you that a reward is a thing of value or money received for certain behavior, a fee is a payment for special services, compensation is the receiving of an agreed to payment after the performance of a service;-- fifth, doing of such act or acts knowingly, that is, willfully and purposefully and not because of mistake, inadvertence or accident or some other innocent reason.

Now as to the third element, the receipt of any fee, compensation or reward, I will instruct you that this would include, if you so find under the evidence in this case beyond a reasonable doubt, the receipt of any gratuity given because of the position of Niederberger as an Internal Revenue Agent in the performance of his duty as Case Manager for the audit of the Gulf Oil Corporation.

Under the fourth and fifth elements, I will say again that the act of receiving must have been done willfully and knowingly and not because of mistake or accident or some other reason.

It is, however, not necessary for a violation of this section of the Internal Revenue Code to

Charge of the Court

show that a particular favor was promised by the agent or expected of him. It is only necessary that the government prove to you beyond a reasonable doubt that Niederberger knowingly received compensation for the performance of his duty when such compensation was

(p. 21)

not prescribed by law, or, to put it bluntly, an Internal Revenue Agent should not receive additional compensation for doing his required duties.

In other words, these aiding and abetting counts -- and these are 1, 3, 5, 7 and 9, under 7214 require proof that the agent knowingly received a fee not prescribed by law for the performance of his duty, and that the defendant, in this case, Standefer, aided and abetted him in doing so willfully and knowingly.

Because up to this time I have been dealing with Neiderberger's receipt of these monies, but you remember the indictment does not charge Niederberger with receiving these monies, but it charges Standefer with aiding and abetting him in receiving them, because up to this time -- you may wonder,

Charge of the Court

"What has this got to do with Standefer?"

Well, this brings us to another statute.

Of course, Standefer wasn't an IRS Agent, and there is no pretense of that. But this other statute which is part of the U.S. Criminal Code provides as to aiding and abetting another to violate the law, "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal, and whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal."

(p. 22)

Now, these words, "aid and abet," should be defined to you, and I will say that in order to aid and abet another to commit a crime, it is necessary the accused willfully associates himself in some way with the criminal venture and willfully participates in it as he would in something he wishes to bring about; that is to say, he willfully seeks by some act or omission of his own to make the criminal venture succeed, that is, in this case the receipt of unlawful compensation by Niederberger.

Charge of the Court

I must say to you that an act or omission is willfully done, as used here, if it is done voluntarily and intentionally and with specific intent to do something which the law forbids or intent to fail to do something the law requires to be done, that is to say, with a bad purpose to disobey or disregard the law; and while under the aiding and abetting statute it is required that the aiding and abetting must be willfully done, it is not required that there be any corrupt intent or motive.

I previously alluded to this with respect to the bribery statutes, which do require corrupt intent and motives; and I will say to you, therefore, that if you find beyond a reasonable doubt that the defendant Standefer willfully aided and abetted an IRS Agent in receiving a fee or compensation except as allowed by law for the performance of his duty, you may find the defendant guilty. Otherwise, if you do not so

(p. 23)

find, you should acquit him.

Since I have used the word "knowingly", I must define this to you, that an act is done knowingly if it is done voluntarily and intentionally and not because of a mistake or accident or

Charge of the Court

some other innocent reason.

Further I must say to you with respect to the word "intent" that intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind, but you may infer the defendant's intent from the surrounding circumstances of the matter.

You may consider any statements made or acts committed by the defendant and all other facts and circumstances in evidence which indicate his state of mind.

You may consider it reasonable to draw the inference and find a person intends the usual and natural, probable consequences of his act, but I say to you this is entirely up to you to decide from the facts in evidence.

Now, members of the jury, I have defined to you the elements of the offenses which are charged in this indictment and what you should consider as you approach these charges.

I'm not going to comment at length upon the evidence in this case. We have been here two weeks. I would take too

Charge of the Court

(p. 24)

long to do the same fairly and without unduly emphasizing evidence on either side.

It is your duty to fairly consider all the evidence in the case. You must determine what you will believe.

If there is any question as to what is the fact on a certain matter, it is your recollection as to what the evidence was and what credibility you are going to give to each of the witnesses.

I will say to you, however, that it is the contention of the government that the defendant Standefer knowingly gave or caused to be given to Niederberger gifts and things of value, namely, these vacation trips, Niederberger being the Large Case Manager for Internal Revenue Service in charge of the audit of the tax returns of Gulf Oil, of which the defendant was vice-president, and that these things were given in connection with the performance of Niederberger's duties performed or to be performed, and that the same was compensation not authorized by law, in violation of Section 201(f); and that also the government contends that Standefer aided and abetted him in receiving compensation not authorized by law for the performance of his duties as an Internal Revenue Agent,

Charge of the Court

in violation of 7214, and thus it is claimed that the defendant is guilty of violating both of these statutes.

On the other hand, it is the defendant's contention that these trips and vacations were matters of friendship and

(p. 25)

social affairs, in accordance with the accepted practices in the industry and in business.

Further, his contention is that nothing was discussed on these trips concerning the audits or other business of the Gulf Oil Corporation.

He contends that he was not knowingly engaged in giving Niederberger compensation not authorized by law for the performance or non-performance of any duty performed or to be performed in connection with the audit of these returns or aiding and abetting Niederberger in receiving compensation not authorized by law for the performance of any duties.

Defendant contends that he did not knowingly or willfully violate the law and does not believe he did so. He contends that he is not guilty of any of these charges.

Charge of the Court

Now, members of the jury, the parties, it is their right to have requested of the Court for certain instructions.

To the extent that these requests have already been covered by my general charge, I will not repeat them at this time.

I may affirm a certain point, which means that it is a correct statement of the law, or I may affirm it with modifications, or I may refuse the points generally.

First, the points for charge presented by the government, the first is refused as already covered by the general charge.

(p. 26)

The second is refused as covered by the general charge.

The third is refused for the same reason.

The fourth will be affirmed with modification. It is sufficient for the purpose of proving intent that the giving of the vacation, things of value, compensation or reward set forth in the indictment were not accidental but intentional occurrences, even though the defendant Standefer may have been ignorant of any illegality. That

Charge of the Court

point is affirmed.

No. 5 is refused as covered by the general charge.

No. 6 is refused.

No. 7 is refused as covered by the general charge.

Nos. 8, 9 and 10 are refused for the same reasons.

No. 11 will be affirmed. The statutes at issue prohibit the agreement to give, offer or promise to give things of value for the purpose, if proven, of creating good will, favoritism and better working atmosphere or a preference in connection with a public official's performance of his official duties and acts. That point is affirmed.

No. 12 will be affirmed. I charge you as a matter of law that the vacation trips the defendant gave, offered or promised to give are not authorized by law to be given to Internal Revenue Service employees for the performance of Internal Revenue Service duties. With a slight modification, it is affirmed.

Nos. 13, 14 and 15 will be refused.

Charge of the Court

(p. 27)

The government this morning presented two additional points.

The first will be affirmed with a modification. If you find beyond a reasonable doubt that the defendant committed each element of the offense charged, then you may find the defendant guilty. You may so find even though you also find that such evidence is widespread in the industry, where industry custom and practice cannot serve to repeal the criminal law. That point is affirmed with the modification, that these facts may be considered by you in determining what were his motives or purposes in connection with these matters.

Request No. 2 will be refused.

The defendant has also requested certain instructions.

Nos. 1, 2, 3 and 4 will be refused.

No. 5 will be affirmed as modified. I charge you that F. W. Standefer is not on trial for providing free vacations for Cyril J. Niederberger, and the mere fact that he may have arranged for vacations or for payment of same is not a crime-- with the adding of the words -- in itself, but these are facts which may be considered by you

Charge of the Court

along with the other evidence in the case.

No. 6 will be affirmed. In order for you to find the defendant Standefer guilty of any of the counts of the indictment, you at first have to determine that the government has proved each of the essential elements of each offense

(p. 28)

beyond a reasonable doubt. If the government has failed to do so, then you must under your verdict as a jury find the defendant not guilty as to that particular count.

That's why we have broken these down, and we want your finding as to each particular count in this case.

No. 7 will be affirmed with a modification. Among the essential elements that the government must prove beyond a reasonable doubt as to Counts 2, 4, 6 and 8 is that in each count and as to each event the thing of value given to Niederberger was otherwise than as provided by law and was given to him solely as compensation for or because of an official act or acts to be performed by him. If the trips referred to in each of these counts of the indictment were solely by reason of the friendship of Standefer and Niederberger and not for or

Charge of the Court

because of any official act or acts performed or to be performed by Niederberger as an Internal Revenue Service Agent, then you must find the defendant Standefer not guilty. That point is affirmed with the modification that the official acts referred to are the audit of the Gulf tax returns.

No. 8 will be affirmed with a modification. As to Counts 1, 3, 5, 7 and 9 of the indictment, an essential element which the government must prove beyond a reasonable doubt is that the thing of value allegedly given in each of these counts must have been as a reward, fee or compensation for the performance of Niederberger's duty or duty to be performed as an

(p. 29)

Internal Revenue Service Agent. If the government in this case has failed to prove this essential element with reference to the audit of these returns beyond a reasonable doubt, it is your duty as a juror to find the defendant Standefer not guilty. That point is affirmed with the modifications.

Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 will be refused.

Charge of the Court

Nineteen is refused.

Twenty is refused as covered by the general charge.

Twenty-one will be given with a modification. It will be confirmed. You may consider whether Standefer had a good faith belief that his conduct did not constitute a crime if you find that he acted in reliance upon official interpretation and conduct of Internal Revenue Service officials in attending golf outings, parties, Christmas luncheons, dinners and the like paid for by the Gulf Oil Corporation. This may be considered by you, however, in conjunction with all the other evidence in the case in arriving at your findings.

Now, members of the jury, there is nothing peculiarly different in the way you should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence which is submitted to them. You are expected to use your own good sense.

Consider the evidence only for those purposes for which it has been admitted. Give it a reasonable and fair

* * * *

Charge of the Court

(p. 33)

MR. GONDELMAN: Pardon?

THE COURT: I have used the word "willfully" in connection with aiding and abetting. That's refused.

MR. GONDELMAN: Next I object to that portion of your Honor's charge where you have taken from this jury the crucial fact of the defense that every audit that was performed was performed properly. At least they could so find.

You said it was irrelevant, and yet you have told them they could consider all the facts and circumstances.

The most important fact and circumstance, of course, in connection with Standefer's intent is whether those audits were conducted properly or improperly.

Having been conducted properly, it should be obvious that a finder of fact could weigh that very heavily in favor, even though it isn't an element of the crime.

Under this malum prohibitum nonsense the government is arguing in this case, even though they don't have the burden of proving that, the fact is that it is an important, crucial consideration for a jury in determining whether the payments were willful, voluntary, intentional, knowingly under 201 or 7214, very crucial.

Charge of the Court

THE COURT: In other words, what you say is the fact that he paid them the money, but it didn't take, that's a defense.

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Exception refused.

MR. GONDELMAN: It is a factor -- You said it is a defense. It is a factor in determining the guilt of the defendant when a question of whether it took or didn't take is a fact to be weighed by a jury on a factual determination, not as a matter of substantive crime, but a highly important element on whether or not in fact there was a crime committed at all.

THE COURT: Exception refused.

MR. GONDELMAN: Now I object specifically to Your Honor's instructions that it doesn't make any difference whether there was any agreement with Niederberger and the government doesn't have to show any agreement with Niederberger, when in fact in this whole case, most of the stuff that came in come in on the threshold of conspiracy, which requires that there be a showing of an agreement with Niederberger.

THE COURT: That's with respect to aiding and abetting.

Charge of the Court

MR. GONDELMAN: Well, that's also with respect to 201.

THE COURT: Also 201.

All right, exception refused.

MR. GONDELMAN: I object to the elements both as to 201(f) and 7214 as given by the Court, because the Court has not defined the area that giving a thing of value for or because of an act performed or to be performed, whether it is --

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in either of these cases, the language is the same; that is, that without the proof that the act -- that it is a fee for the act performed or to be performed, in Your Honor's definition of it, all you are saying is if something is given and an act is performed, the jury can find him guilty; and it is, as I understand it, not the law, but I understand your --

THE COURT: I don't think I told the jury that.

Exception refused.

MR. GONDELMAN: That's my interpretation of what Your Honor has said in this case. You have

Charge of the Court

specifically told the jury that "willfully" means differently than voluntarily or intentionally, but you have told them it does not require corrupt intent or motive on the part of the defendant.

THE COURT: The Court did use that exact language in distinguishing this from the bribery statute.

MR. McKAY: That's correct, as the cases so hold. As a matter of fact, U.S. v. Barash.

MR. GONDELMAN: But, you see, this isn't a bribery case.

THE COURT: That's right.

MR. GONDELMAN: That's why it is so unfair to try 201(f) and 7214(a)(2) together, because although -- You use aiding and abetting to get 7214(a) to say what 201(f) says directly. But you have ruled on that.

In addition, I object to the prejudice of this

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defendant having to have stood trial and how having this jury instructed on evidence relating to Counts 1, 3 and 5 of the indictment, which really isn't before the jury, because it is an academic exercise, because Niederberger has been acquitted of the 7214(a) violations; and again there is no law that's cited to the Court that will permit

Charge of the Court

Standefer to stand in the shoes of Niederberger, if Niederberger is acquitted of the very nature of the offense. It must have an Internal Revenue Service Agent present for --

THE COURT: I have ruled on that several times.

MR. GONDELMAN: I know, but I have to protect my record now, with the Court of Appeals.

I also -- Let me get the government's ones that you affirmed, Your Honor. May I?

(Pause.)

MR. GONDELMAN: I object to your Honor's reading the newfound additional point for charge which I didn't know about prior to argument, and that is the additional Point 1, that the conduct, even though widespread in the industry, cannot serve to repeal a criminal law.

Nobody said that, and the fact that the government wants to argue it and Your Honor has now read it in your points for charge --

THE COURT: Didn't Mr. McKay give this to you?

MR. McKAY: I provided that to Mr. Gondelman this

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morning.

MR. GONDELMAN: This morning, but I didn't know what Your Honor was going to do with it until after I closed. I didn't even know you would consider it, because they weren't provided in proper form.

In addition, I think it is an improper prejudicial statement of law and is characterizing and making fun of a very serious contention.

Nobody is contending that what was done repealed the criminal laws of this country, but rather it slants the defense in this case prejudicially to the defendant.

Similarly, the reading to the jury of the fourth point for charge, that is, referral again to whether the things of value were accidental, even if ignorant of the illegality, is not -- It is pulled out of the case out of context and has nothing to do with this case, and I think, coming at the end of Your Honor's charge, is highly prejudicial.

Charge of the Court

MR. McKAY: That's the case law in numerous other cases on point.

MR. GONDELMAN: Obviously the Judge agrees with you, because he read it to the jury. I'm making my record at this time.

MR. McKAY: Fine, Mr. Gondelman.

MR. GONDELMAN: The reading to the jury of the government's Point 11, the statutes at issue, or being in

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agreement, creating good will, favoritism, or better working atmosphere or of preference in connection with a public official's performance of his official acts and duties, the averments of that point highlight how terribly prejudicial it is to them, see, to say to this jury that even though you can find it was to create good will, favoritism, better working atmosphere or preference, to take away from the jury consideration of the fact that none of that was actually done here, because there was no preference, there was no favoritism, because these audit reports were accurate.

Charge of the Court

So you have said that it is illegal to do it if you do it for this reason, but we won't let you consider the fact that makes that not applicable to this case.

I object to 12, which says that as a matter of law, the vacations the defendant gave, offered or promised are not authorized by law, because you didn't also tell this jury that they are not specifically not authorized -- prohibited by law. There is nothing -- Nobody has put a regulation in this courtroom yet that says they are prohibited.

Now you are telling them they are not authorized. They think they are not authorized, they must be illegal, but that isn't the law.

THE COURT: Anyway, I think I left it open to the jury.

He had somewhere in there "must". I changed it to

* * * *

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(Three bailiffs were duly sworn.)

THE COURT: All right, here is the verdict slip and here is the indictment, which I have

Charge of the Court

already cautioned the jury about, that it is not evidence. It is sent out with you solely as a guide so as to follow these various charges in your deliberations.

All right, this Court will now recess for jury deliberations.

(The jury retired to begin their deliberations at 12:50 P.M.)

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(The following proceedings were held in chambers beginning at 4:15 p.m. on December 9, 1977. Defendant was present with counsel.)

MR. GONDELMAN: The record may show Mr. Standefer's presence with me in response to an instruction that the jury had a question.

THE COURT: The question is, "Is intent to be considered in any of the nine counts?"

MR. GONDELMAN: An easy answer, "Yes".

THE COURT: Well, it is considered in the odd numbered counts.

MR. GONDELMAN: No.

MR. McKAY: No, it isn't. That's correct.

THE COURT: You say that's correct?

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MR. McKAY: Well, I don't know what the jury is driving at. It is hard --

THE COURT: There is a shade between general intent and specific intent with willfulness and so on.

In my opinion, willfulness only applies to the odd numbered counts.

Of course, they asked for intent, but the allegation is knowingly, unlawfully and knowingly. That's the allegation of the indictment.

MR. GONDELMAN: But the difficulty, Your Honor, is that the jury is asking a question. If I may use the government's phraseology, it is a question which is general in nature, and the jury has asked Your Honor as to whether or not intent is to be considered in all nine counts of the indictment, and the answer to that is an unequivocal yes, because intent means the state of mind of Standefer.

THE COURT: That's right.

MR. GONDELMAN: And therefore it has to be yes.

THE COURT: Yes, that's right. All right. The government agrees?

MR. McKAY: Your Honor, it is unclear what the jury is getting at. It seems to be a distinguishing between a general intent and a specific intent.

THE COURT: I'm not sure. You are reading something into it that isn't there.

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MR. GONDELMAN: That's my point.

MR. McKAY: I can't understand what the jury is driving at. The intent is not one of a specific criminal intent. I think that's clear, and certainly the 201(f) count, Your Honor, --

THE COURT: Well, that's what I had in mind.

MR. GONDELMAN: But that isn't the way the question reads, and it could be misleading to answer it in any other way than -- Because state of mind is intent. Intent is state of mind.

State of mind is the crux of all nine counts of this indictment.

MR. McKAY: That's not necessarily true, Your Honor, as the Court well knows.

THE COURT: I have already told them the language from -- What is the case? Cohen? It's not Cohen.

MR. SELIGSON: Irwin?

THE COURT: Irwin, yes. This is where it is found.

The making of the gift provision -- making it to a public official to include those which are accompanied by, in this particular -- state of mind, design or purpose, which is the essence of intent. Whether this is in regard to a specific intent or is a limited state of mind in which an act is done is an essential element the government must prove. That's on 201.

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MR. McKAY: The intent, I think what the jury is getting at is the difference between the general and specific intent.

The case law holds that merely intent of the actual consequences of your acts, namely 201(f), to give the gift in question. It is not a specific or corrupt intent.

I think that is a very important distinction in this case. This is not a corrupt intent.

THE COURT: All right.

MR. GONDELMAN: They didn't ask for corrupt intent as it is phrased.

I think what Your Honor said is the state

of mind of the defendant. I have no objection to your saying that to the jury, but if by intent they are asking whether the state of mind of the defendant is an element in all nine counts of the indictment, the answer is an unequivocal yes. It has to be.

MR. McKAY: I don't agree, Your Honor. The question cannot be answered by a simple yes or no.

THE COURT: Oh, I think so.

MR. McKAY: Because the counts are different. There is a difference between a specific intent to corrupt, to influence, and merely a general intent to give the gift; and it was not by mere mistake or inadvertence. I think that is very important, Your Honor.

To merely say yes or no I think would mislead the jury

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at this time.

THE COURT: All right, bring the jury down.

MR. GONDELMAN: Perhaps what I ought to say at this time, because it is clearly pointed up by the jury question, if Mr. Standefer intended to take Mr. Niederberger on any vacation as an act of friendship, that intent is non-criminal.

Charge of the Court

THE COURT: I have said that.

MR. GONDELMAN: But that's why the answer to the question on intent as to all nine counts is yes.

MR. McKAY: There is a different kind of intent involved. It is a general intent versus a specific intent.

MR. GONDELMAN: It is intent as to --

MR. McKAY: Excuse me, to corrupt or influence.

MR. GONDELMAN: It is the intent of, the purpose of the trip, and if the trip is friendship, it is an intent that is not criminal. That's why the answer to that question has to be yes.

MR. McKAY: Of course, an intent to create a favorable business atmosphere and relaxation is also an intent. Intent for speedy and favorable audit is an intent.

MR. GONDELMAN: That's why the answer still is yes.

THE COURT: I have already covered that.

MR. GONDELMAN: Even just what he said, the answer is still yes because the intent is an element. He just said it.

Charge of the Court

MR. McKAY: The question is indeed confusing in that

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it is so general.

THE COURT: Much of the confusion is caused by the fact you have these duplicating counts.

All right.

(The proceedings in chambers were concluded.)

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(The following proceedings were held in open court before the jury beginning at 4:15 p.m. on December 9, 1977. Defendant was present with counsel.)

THE COURT: Members of the jury, you had sent to the Court a question, "Is intent to be considered in any of the nine counts?"

The answer is yes.

With respect to each of these counts, it is necessary that you find that the defendant did intend to give gratuities or vacation trips or what-have-you to Niederberger for the purpose or because of an official act to be performed -- performed or to be performed by Niederberger; and as I have told you, it is necessary that you

Charge of the Court

find that he did this not inadvertently or negligently or by reason of mistake, but intending to give these things to the Internal Revenue Agent for or because of official acts.

For instance, with respect to the 201(f) charges, I told you it was necessary for the government to prove that the defendant committed the act of giving, offering or

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promising knowingly and purposefully and not through misunderstanding, inadvertence or for some other innocent reason, and that the gift was with the purpose or state of mind of giving a thing of value for or by reason of the official act performed or to be performed by the agent; and I told you on the other hand that if this had nothing to do -- if giving these gratuities had nothing to do with the giving of things of value to a public official, but on the contrary were given as a matter of friendship and for social purposes only, then you should acquit him; and this is the thing you have to decide. This is a very difficult thing and it is an important thing; and in these cases, with respect to all of these counts, for the reason that I told you,

Charge of the Court

intent is something that you can't prove directly. Someone said they would have to crawl into somebody else's mind, and of course, we know we can't do that, and there is no way of even putting a machine on somebody else's mind and finding out what he intends.

But what we say is, it need not be proved directly, but you may infer a defendant's intent from the surrounding circumstances, and therefore you may consider any statements made or done or acts committed or all the other facts and circumstances of the case in trying to determine what was his intention, what was his purpose to do by extending these gratuities, if you find that he did.

We further told you on the other charge that you had

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to find that he did these acts willfully or knowingly, willfully and purposely, and not because of mistakes, inadvertence or accident; and I think that is the problem.

Charge of the Court

I appreciate it is a very difficult problem. We often have that problem in many other circumstances, and particularly in the criminal law. What was the purpose, and what does the person intend by doing certain acts?

I don't know if I have clarified it. I have done the best I can in telling you that the state of mind of a person in connection with the charges is important, and I have differentiated the two things which must be considered in connection with it.

Who is the foreman?

JUROR NO. 6: I am.

THE COURT: Mr. Foreman, do you have any other question?

I don't know as I can clarify your problem any better than what I have done.

THE FOREMAN: The only other question, Your Honor, that I may bring up that could be in some of the people's mind, and yet we haven't discussed it, is, there was a point that was brought up, if I remember correctly, and this is in relation to the defendant's intent.

If there is any doubt whether the intent was there or not, in other words, in so many

Charge of the Court

words, if you are not sure

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one way or the other, then you are supposed to give your attention towards the acquittal?

THE COURT: Well, that's what I said early in my charge, that if you consider that the evidence permits either of two conclusions --

THE FOREMAN: Right.

THE COURT: -- why, then the government has not proved its case beyond a reasonable doubt.

You have got to determine that the government has proved beyond a reasonable doubt that these gratuities, vacation trips and what-have-you were extended for the purpose or on account of the official acts to be performed by the defendant, and not on account of friendship or for mere social purposes.

THE FOREMAN: Thank you, sir.

THE COURT: That is the crux of the matter. What was the purpose in doing this?

MR. McKAY: Your Honor, could I approach side bar?

THE COURT: Yes.

Charge of the Court

(At side bar, out of the hearing of the jury.)

MR. McKAY: Your Honor, I think the jury must be informed that if the intent is to relax business atmosphere or good will, that this is a sufficient intent in the 201(f) counts. I think that is confusing.

I think also the official act, it must be stated that

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the official act is the audits.

MR. GONDELMAN: You have said that already, Your Honor. I object to the repeating.

THE COURT: I have said that.

MR. GONDELMAN: Thanks.

(In open court.)

THE COURT: It has been suggested that I should inform you -- and I think I have, I think you all understand -- that the official act we are talking about here is the audit of the Gulf Oil Corporation returns in which this man was the Large Case Manager.

Charge of the Court

On the other hand, I have also pointed out to you that these statutes do not require that corrupt intention which goes for the bribery case; and further I informed you that it is sufficient if these payments were paid for any reason in connection with the audit, because of a desire to create a better working atmosphere, or appreciation for a speedy and favorable audit, and that any of these would be purposes that whether the returns were correct or not is not relevant in this case. But it has to be for the purpose of giving these things to the agent on account of the audit of these returns and his position with respect thereto.

All right, the jury may retire for further deliberations.

(The jury retired to continue deliberations at

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4:25 p.m.)

MR. GONDELMAN: May we have exceptions noted?

THE COURT: Note exceptions for everybody.

MR. McKAY: Concerning the last question of the juror, it seemed like he was asking a question concerning -- The last question of the

Charge of the Court

juror, as he went through his -- directing his attention toward what is reasonable doubt, it was unclear what --

THE COURT: I think that's true, and I told him if the evidence permits two explanations, why, we have to draw the explanation of innocence. I thing that's boilerplate.

MR. GONDELMAN: I simply want to place on the record again the fact that I object to Your Honor's stating that the fact that the audits were correct is not a circumstance to be considered, because it is one of the most important circumstances, and to Your Honor's going on beyond the question of the jury and relating parts of the charge which really didn't relate to what they asked to --

THE COURT: Well, I had to do it, because it wasn't exactly clear just what the jury had in mind.

MR. GONDELMAN: I liked the question, Judge.

THE COURT: I should think you would.

(Court recessed at 4:25 p.m.)

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